122-628

(4)

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1884.

WM. H. FOWLE, JR., *Administrator of*
WM. H. FOWLE, *Deceased, Appellant,*
vs.
ALEXANDER HAY.

No. 1078.

Brief for the Alexandria and Fredericksburg Railway Company on Motion to Dismiss the Appeal Under Rule 9.

Ramey Print, 8 to 10, s. Royal Street.

IN THE

Supreme Court of the United States,

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WM. H. FOWLE, JR., *Administrator of*
WM. H. FOWLE, *Deceased, Appellant,*
vs.
ALEXANDER HAY.

No. 1078.

Brief for the Alexandria and Fredericksburg Railway Company on Motion to Dismiss the Appeal Under Rule 9.

GROUNDS OF THE MOTION.

1st. The appellant has not filed here a complete record, containing in itself, without reference *aliunde*, all the papers, exhibits, depositions and other proceedings which are necessary to the hearing in this court, but on the contrary, has obtained from the clerk of the lower court, copies of certain papers on file amongst the record of the proceedings of the cause, and has filed these "scraps" as purporting to be a record.

2nd. The return made by the clerk of the lower court to the appeal, does not satisfy the demand of the law, in that he fails to certify that the papers transmitted to this court constitute the record of the cause in his court. He in fact certifies that said documents do not constitute the record, for in his certificate accompanying the "so-called" record he certifies said papers "to be true, full and perfect copies from the record of the proceedings in

the cause of Alexander Hay *vs.* the Alexandria and Washington Railroad Company *et als.*, No. 8A. in said court, said copies being part of the record of the proceedings in said cause, and are made and certified at the request of William H. Fowle, Jr., administrator, &c., one of the defendants in said cause, who has appealed from said decree."

For convenience of reference, a full copy of said certificate is here inserted.

[COPY.]

UNITED STATES OF AMERICA, }
Eastern District of Virginia, } *ss.*

I, M. F. Pleasants, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify the foregoing "amended bill"; joint and several answer of the District of Columbia and others; answer of the Alexandria and Washington Railroad Company; answer of the Alexandria and Fredericksburg Railway Company, and Exhibits A. and B., the cross-bill by the Alexandria and Fredericksburg Railway Company, and Exhibit Z.; answer of William H. Fowle, Jr., administrator, to cross-bill; testimony on behalf of Fowle, Snowden & Co., and Exhibits 1, 2, 3 and 4; report of Special Examiner and Master; exceptions of William H. Fowle, Jr., administrator; of Alexander Hay, and of the Alexandria and Fredericksburg Railway Company, to the report of the Special Examiner and Master; decree of April 5, 1884, and the bond of William H. Fowle, Jr., administrator, &c., to be true, full and perfect copies from the record of the proceedings in the cause of Alexander Hay *vs.* the Alexandria and Washington Railroad Company *et als.*, No. 8A. in said court, said copies being part of the record of the proceedings in said cause, and are made and certified at the request of William H. Fowle, Jr., administrator, &c., one of the defendants in said cause, who has appealed from said decree.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Alexandria, this day of October, A. D. 1884.

(Signed,)

M. F. PLEASANTS,
Clerk.

The cause out of which this appeal arose was a main cause originating in the Circuit Court of the United States for the Eastern District of Virginia, under the style of Alexander Hay *vs.* the Alexandria and Washington Railroad Company and others.

Out of this grew a cross-suit, under the style of the Alexandria and Fredericksburg Railway Company *vs.* Alexander Hay and others. These two suits were ordered to proceed and be heard together. The amounts involved were large, the parties numerous, the interests varied and the pleadings and evidence voluminous. The case is reported 15 A. & E. R. R. Cases 647. The record (with the exception of several exhibits filed by the appellant Fowle and his co-defendants) was printed for use in the lower court. A copy of it will be filed with the clerk along with this brief for the inspection of the court, in order that it may be clearly seen how little of the real record the appellant has brought here and how much of it he left behind.

First Point—The appellant has not filed here a record of the case.

The decree appealed from was passed April 5, 1884, and contains this clause: "And from so much of the said decree, as decrees that there is no lien for the debt found due by the Special Master and Examiner in favor of Fowle, Snowden & Co., upon the property and franchises of the Alexandria and Washington Railroad Company, and from so much of the said decree as gives to the Lennox deed, the judgments of Alexander Hay and the claim of the Alexandria and Fredericksburg Railway Company priorities over the claim of Fowle, Snowden & Co., the defendant William H. Fowle, Jr., administrator, prays an appeal in open court, which is allowed upon bond to operate as a supersedeas, in the penalty of $250." So that the appellant appealed from the decree establishing the debts, rights, liens and priorities of the several parties just specified.

In the lower court, 267 pages of printed testimony was taken to sustain the pretensions of the several parties to the controversy. Of these 267 pages of evidence 17 pages referred to the claim of appellant, and those 17 pages are all that are brought to this court, whilst the remaining 250 pages containing the evidence upon which the court below based its decision, and framed its decree,

settling the rights of the litigants and adjusting the equities between the parties, are excluded from the record. Not one iota or scintilla of the evidence taken in behalf of this appellee, the Alexandria and Fredericksburg Railway Company, and upon which the Circuit Court decreed in its favor, has been brought here. Can justice be done to the parties upon an inspection of such an emasculated record as has been brought here by the appellant? That evidence is necessary to support and sustain the appellee's cause. If in a cause containing bill and answer and evidence for complainant and defendant, there is a decree in the Circuit Court dismissing the bill, can the said complainant bring only the bill of complaint and his evidence here, and claim that it constitutes a record of the cause as heard and determined below? If he does so, should he not pay the price of his own folly, and have his appeal dismissed, for filing as a record that which he knew was not a record? Of course it is not the duty of the Clerk of this Court to determine what constitutes a record. If simply the subpœna commencing the suit was brought to him as the record, it is presumed he would file it as such.

In Railroad Company *vs.* Schutte. 100 U. S., 647, this Court, say: "While we desire to encourage in every proper way all attempts made in good faith to exclude immaterial matter from the transcripts brought here on appeals or writs of error, it will not do to permit the appellant or plaintiff in error to make up a record to suit himself, without any regard to the wishes of his opponents or the rules and practice of the Court." The effect of this record if allowed to remain in its present condition would be to exclude material not immaterial matter, to make up a record to suit himself without regard to the rights and wishes of his adversaries or the rules and practice of this Court, to make a case to suit himself. How can any other conclusion be reached, when the appellant directs the clerk to copy and certify his evidence alone, and neglects and refuses to bring up that of his adversaries —when the evidence so left behind is the very foundation of the decree appealed from—the ground upon which the Court rejected his claim, and established those of his adversaries.

In Railway Co. *vs.* Stewart, 95 U. S. 285—this Court say—"It is not easy to prescribe by rule what a record in all cases shall contain or what shall be excluded, but rule 52 in Admiralty contains suggestions which may serve as an appropriate guide at law or in equity."

Now for the appellee it is respectfully submitted that if rule 52 in Admiralty be applied as a test to the "fragments" of the cause brought here, it must be determined that in fact and in truth no record has been brought to this Court. As an appendix to this note there is a table shewing the pleadings and evidence in the Court below. Those papers of which copies have been brought here are marked thus (*).

The appellant has not even brought here a copy of the decree referring the case to the special examiner and master nor a copy of the opinion of the Circuit Court, and statement of facts made by it.

The failure to incorporate the opinion of the Circuit Court, in the so-called record is a patent violation of section 2, rule 8, of this Court.

Suppose it could be established to the satisfaction of the Court that, the object of the appellant was to bring such portions only of the record as he wishes to use, and to drive the appellees to apply under the 14th rule for a *certiorari* for diminution of the record—to compel them to bear the costs of bringing here and printing the parts of the record necessary to sustain their cause, when it is the plain duty of the appellant to file a record fair to all the parties and have the same printed? In such a case it is very safe to say that this Court would not sanction this practice. Now in this case the appellant by presenting a partial record, has necessitated the making of this motion, the consideration of which will consume the time and labor of the Court. And as it is a fault to bring superfluous and immaterial matter, so it would seem to be equally wrong to omit necessary and material parts of the record.

With respect to the pleadings he has been a little more liberal

The original bill in the main cause is not copied in the record "so called," but the amended bill is. In the cross cause, there only appears the bill with its exhibit and the answer of the appellant. The answers and exhibits of all the other defendants are omitted. But all of this will appear by a glance at the appendix.

Second Point—That the so called record is not certified by the Clerk of the Circuit Court to be the record of the cause.

In Blitz *vs.* Brown, 7 Wallace, 693, a writ of error was dismissed where the transcript contained only a blank form of certificate of authentication, without the seal of the Court below or the signature of its Clerk.

If the certificate was simply the signature of the Clerk and seal of the Court and no more, it would be equally faulty. So if the certificate contain less than the rules of the Court require, it is valueless. For instance, if the clerk certifies that what purports to be a record, is only a part of the record, it is more than if there was only a blank certificate, for it shows affirmatively not only that a proper certificate is wanting, but further that a complete record is lacking. Such a record as is necessary to the hearing in this Court.

Now this certificate forms a part of the record, which is the return to the writ of error or appeal. And no return can be made unless by filing a perfect record, and no record can be perfect unless it contain a certificate that, it is such a record as the rules of the court require. And as the certificate given by the Clerk shews that the accompanying papers are not a true copy of the record, it follows that no record has been filed and no return made to the appeal.

Evidently the papers filed by appellant are either a transcript or not a transcript. The appellee maintains that they are not a transcript.

It it most respectfully submitted that from the Clerks certificate it appears affirmatively and positively. 1st. That the papers filed by appellant are but fragmentary copies. 2nd. That they constitute but a part of the record. 3rd. That they are not a complete record, containing in itself, without reference *aliunde*, all the papers,

exhibits, depositions, and other proceedings which are necessary to the hearing in this Court, and which by its rules are required to be filed. And that as the decree was passed by the Circuit Court of the United States for the Eastern District of Virginia on the 5th of April 1884, and the record has not been filed, that said Appeal should be dismissed under the 9th rule of this court. A certificate of the Clerk of the Circuit Court, stating the cause accompanies the motion and notice.

Respectfully submitted,

FRANCIS L. SMITH,

Of Counsel for Appellee the Alexandria and Fredericksburg Railway Company.

APPENDIX.

ALEXANDER HAY *vs.* THE A. & W. R. R. Co. ET ALS.

Bill of Complaint.
Petition for leave to File Motion for Receiver.
Motion for Receiver.
Plea of Joseph Thornton.
Affidavit of Jos. Thornton.
Amended Bill of Complaint.
Petition of Alexander Hay.
Plea of District of Columbia to Jurisdiction.
Answer of Riggs & Co.
* Joint and Several Answer of the District of Columbia and others.
Motion for Discharge of Receiver.
" " " Over-ruled.
* Answer of A. & W. R. R. Co.
* Answer of A. & F. Ry. Co.
* A. & F. Ry. Co. Exhibit A.
* " " " B.
Answer Thornton & Marbury.
Stipulation as to Defendant, Alex. Elliot.
Notice of Application by A. & F. Ry. Co. to File Cross-Bill.
Motion for leave to Amend Amended Bill.
Order leave to File Motion for Receiver and for hearing on same.
Notice of Motion for Receiver.
Order Over-ruling Thornton's Plea.
" Appointing Receiver.
" Motion A. & F. Ry. Co. Over-ruled.
" for Appearance of Non-resident Defendants.
" for hearing on Motion for Discharge of Receiver.
" for A. & W. R. R. Co. and A. & F. Ry. Co. to File Answers at June Rules.
" Appointing Special Examiner and Master.

Order extending time for A. & F. Ry. Co. to take Testimony.
" Allowing A. & F. Ry. Co. to File Cross-Bill.
" as to service of Subpœnas to answer Cross-Bill and for publication of depositions of DuBarry & Roberts.
" for Compensation to Commissioner.
" Allowing Examiner to take Testimony outside this District.
" that the Testimony of Geo. B. Roberts be taken by Commission.
" for Payment of Cost of Printing Record.

CROSS-BILL.

* Cross-Bill.
* Exhibit Z., with Cross-Bill.
Answer of Alexander Hay to Cross-Bill.
* Answer of W. H. Fowle, Jr., to Cross-Bill.
Answer of District of Columbia and the Bradleys to Cross-Bill.
Answer of A. & W. R. R. Co. to Cross-Bill.
Demurrer of Thornton & Marbury.
Order setting down Demurrer for Argument.
Notice for hearing on Demurrer.
Order Over-ruling Demurrer.
Joint and Separate Answer of Thornton & Marbury.
Exhibit W. H. M. with Answer.
Exhibit M. & T. with Answer.
Answer of Riggs & Co.
Filing of Exceptions by A. & F. Ry. Co. to Answer of Dist. of Columbia, &c.
Order for Decree Pro Confesso as to Def'ts, M. D. Ball and Edw'd Snowdon.
Order for hearing upon Exceptions.
Order for Over-ruling Exceptions.
Order for both Causes to proceed and be heard together.

TESTIMONY OF ALEXANDER HAY.

Notice.

Testimony—Z. W. Denham.
Exhibit—No. 1.
" Nos. 2 and 3.
" No. 4.
" No. 5.
" Nos. 6 and 7.
" Nos. 8 and 9.
" Nos. 10 and 11.
" No. 12.
" No. 13.
" No. 14.

TESTIMONY RIGGS & CO.

Notice.
Testimony—Thos. Hyde.
" Jos. H. Bradley.
Exhibit—No. 1.
Exhibit—No. 2.
Exhibit.
Exhibit.

TESTIMONY DISTRICT OF COLUMBIA.

Notice.
Testimony—Z. W. Denham.
" Moses Kelly.
" Jno. F. Cook.
" J. T. Petty.
" W. H. Marbury.
" Jas. S. Douglass.
" Edwin J. Brooks.
" J. A. Suydam.
" Geo. C. Wilkins.
" Oscar A. Stevens.
Agreement referred to by Witness O. A. Stevens.
Testimony—David Keener.
Exhibit—Z. W. D. No. 1.
" J. F. C. No. 1.

Exhibit—J. T. P. No. 1.
" W. H. M. No 1.
" E. J. B. No. 1.
" E. J. B. No. 2.

TESTIMONY A. & F. RY. CO.

Notice.
Testimony—John Crowe.
Testimony—A. C. Hippey.
" Patrick O'Connor.
" Lewis McKenzie.
" Jno. S. Leib.
" J. N. DuBarry.
Exhibit—J. N. DuB. No. 1.
" J. N. DuB. No. 2.
" J. N. DuB. No. 3.
Testimony George B. Roberts.
Written Interrogatories propounded to Geo. B. Roberts.
Cross Interrogatories.
Answers to Written Interrogatories.
" to Cross "
Exhibit—A. T. K.
" J. C. No. 1.
" J. C. No. 2.
" J. C. No. 3.
" J. S. L. No. 1.
" J. S. L. No. 2.
" J. S. L. No. 3.
Statement J. S. Leib.

TESTIMONY FOWLE, SNOWDEN & CO.

Notice.
* Testimony F. S. & CO.
* Exhibit—W. H. F., Jr. No. 1.
* " W. H. F., Jr. No. 2.
* " W. H. F., Jr. No. 3.
* " Fowle, No. 4.

TESTIMONY THORNTON & MARBURY.

Notice.
Testimony Jos. Thornton.
Exhibit J. Thornton No. 1.
" " No. 2.

MISCELLANEOUS.

Note as to Motion referred to on p. 16.
Examiners Certificate.
* Report of Special Examiner and Master.
* Exceptions William H. Fowle, Jr., Adm'r.
* " Alexander Hay.
* " A. & F. Ry. Co.
* Decree April 5th, 1884.

NOTICE.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1884.

WM. H. FOWLE, JR., *Administrator of* WM. H. FOWLE, *Deceased, Appellant,* *vs.* ALEXANDER HAY. } No. 1078.

To the appellant in the above entitled cause.

You are hereby notified that, on the 26th day of January, A. D. 1885, I shall move the Supreme Court of the United States at the Court room thereof, in the United States Capitol Building, Washington, D. C., at the hour of 12 o'clock M. of that day or as soon thereafter as counsel can be heard, to dismiss the appeal in the above entitled cause under the 9th rule of said Court, and shall then and there file the motion, notice and brief, copies of which are now served upon you.

Yours respectfully,

FRANCIS L. SMITH,

of Counsel for Appellee,

The Alexandria and Fredericksburg Railway Company.

MOTION.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1884.

WM. H. FOWLE, JR., *Administrator of* WM. H. FOWLE, *Deceased, Appellant,* *vs.* ALEXANDER HAY. } No. 1078.

Now comes Francis L. Smith, of Counsel for Appellee, The Alexandria and Fredericksburg Railway Company and moves to dismiss the appeal in the above entitled cause under the 9th rule.

FRANCIS L. SMITH,

of Counsel for Appellee,

The Alexandria and Fredericksburg Railway Company.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF VIRGINIA.

IN EQUITY.

ALEXANDER HAY,
vs.
The Alexandria And Washington Railroad Company *et als.*
} On Original and Amended Bill.

AND

The Alexandria and Fredericksburg Railway Company
vs.
ALEXANDER HAY *et als.*
} On Cross Bill.

I, M. F. Pleasants, Clerk of the Circuit Court of the United States for the Eastern District of Virginia do hereby certify, that in a certain cause in Equity pending in said Court, wherein Alexander Hay was complainant, and the Alexandria and Washington Railroad Company, The Alexandria and Fredericksburg Railway Company, The District of Columbia, Joseph H. Bradley and A. Thomas Bradley, trustees for the Corporation of the City of Washington and the District of Columbia, Edward Snowden, surviving partner of Fowle, Snowden and Company, William H. Fowle, Jr., Administrator of William H. Fowle, deceased, Joseph Thornton, M. Dulaney Ball, trustee, William H. Marbury, John Elliott, Alexander Elliott, Charles C. Glover, Thomas Hyde, E. Francis Riggs and Thomas L. Riggs, the last six being partners under the firm name of Riggs and Company, were defendants in said original cause; and the Alexandria & Fredericksburg Railway Company was Complainant, and Alexander Hay, The Alexandria and Washington Railroad Company, The District of Columbia, Joseph H. Bradley and A. Thomas Bradley, trustees for the Corporation of the City of Washington and the District of Columbia, Edward Snowden, surviving partner of Fowle, Snowden and Company, William H. Fowle, Jr., Administrator of William H. Fowle, deceased, Joseph Thornton, M. Dulaney Ball, trustee, William H. Marbury, John Elliott, Alexander Elliott, Charles C. Glover, Thomas Hyde, E. Francis Riggs and Thomas L. Riggs, the last six being partners under the firm name of Riggs and Company were defendants in said cross cause; a final decree was rendered by said Circuit Court, on

the fifth day of April, A. D. 1884, in favor of the said, The Alexandria and Fredericksburg Railway Company, and against the said, The Alexandria and Washington Railroad Company, and that on the fifth day of April, A. D. 1884, the said William H. Fowle, Jr., Administrator of William H. Fowle, deceased, prayed an Appeal to the Supreme Court of the United States which was duly allowed.

In Testimony Whereof I hereunto subscribe my name and affix the Seal of said Circuit Court at Alexandria, this Fifth day of December, A. D. 1884.

{ SEAL. }

M. F. PLEASANTS,
Clerk.

122-628

JAN 26 1885
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States,

WILLIAM H. FOWLE, Jr., Administrator of Wm. H. Fowle, Appellant.
vs.
ALEXANDER HAY, and others, Appellees.

No. ~~1078~~ 383

BRIEF FOR THE APPELLANT IN OPPOSITION TO MOTION OF THE ALEXANDRIA AND FREDERICKSBURG RAILWAY COMPANY TO DISMISS UNDER RULE 9.

This is an extraordinary motion as will fully appear from the answer of appellant filed herewith. There is no allegation that the transcript filed is intentionally incomplete, nor is there an intimation, that any portion of the record not copied in the transcript, will be material to the interest of the Railway Company at the hearing of this appeal.

No case cited is an authority for this motion. The strongest case is that of the Railroad v. Schutte, 100 U. S., 647, and the motion in that case was denied, although the court was of the opinion that the President of the company had caused the transcript of the record to be improperly made and certified.

In this case an effort was made to have the counsel of the appellees agree to the papers to be copied in the

transcript, but this effort having failed, the counsel of the appellant in the exercise of his best judgment had a transcrip prepared which fully meets the exigencies of this appeal.

The only party who objects to the suffiency of the transcript is the Alexandria and Fredericksburg Railway Company—although the other appellees have much larger interests involved—and the only question in which the Railway Company is interested is the simple legal question as to whether one Railway Company, can condemn a part of the road bed of another company which by the express terms of its charter it is prohibited from condemning — improve the condemned land, and then claim as against the lien creditors of the company whose land it had these condemned—payment for the moneys expended.

Under these circumstances would it be just to require the appellant, at his own costs, (this debt being the only assets of the estate), to supply copies which are not necessary, for the full consideration of the questions involved in the appeal? If the Alexandria and Fredericksburg Railway Company desires to have copies that are not necessary, should not it pay the costs?

As the pecuniary inability to supply copies of all the papers in the record, may deprive the appellant of the benefit of having his case heard by this court, and as none of the other appellees object to the transcript filed, it is confidently submitted that, the court will not endanger the appellants right of appeal, by requiring him to supply copies of papers, unless there be shown an absolute necessity for their production.

H. O. CLAUGHTON,
Counsel for Appellant.

Supreme Court of the United States,

WILLIAM H. FOWLE, Jr., Administrator of Wm. H. Fowle, Appellant.
vs.
ALEXANDER HAY, and others, Appellees.
} No. 1078.

ANSWER OF THE APPELLANT TO MOTION TO DISMISS UNDER RULE 9TH, FILED BY THE ALEXANDRIA AND FREDERICKSBURG RAILWAY COMPANY.

And now comes the said William H. Fowle jr., administrator and says in opposition to the said motion, that a copy of the record has been filed in full compliance with the requirements of rule 9, which will appear from the following facts, to-wit:

1st. The appeal in this case raises no question of fact, and therefore, the mass of evidence taken to prove the facts reported by the examiner and not excepted to by any party, would not only have been unnecessary, but offensive to the court.

2d. The whole case involved in this appeal, was raised by, and is confined to, exceptions to the examiner's report, upon the legal question of priority of liens.

It is objected that there is no copy of the bill in the record.

There is a copy of the amended bill which is identical with the original bill with the exception of the new mat-

ter introduced in the amended bill. The amended bill is not an amendment, but is the original bill amended.

It is objected that none of the answers to the cross-bill, save that of the appellant is in the record.

The answers were all identical, with the exception of the matters peculiar to the case of the appellant and therefore contained in his answer.

It is objected that the opinion of the Circuit Court [illegible] in writing, filed with the papers is not in the record. The 2d section of rule 8 does not require that it shall be made a part of the record. It is simply a direction to the clerk to "*annex to and transmit with the record a copy of the opinion &c.*"

It is objected that none of the evidence to prove the amounts claimed by the parties respectively is contained in the record.

The report of the examiner finds the amounts due to each claimant respectively and there was no exception to the report as to such finding, nor any appeal from the decree as to these amounts. The only questions raised by the exceptions to the examiner's report were questions of law, and what these questions are appears from the very terms of the appeal itself, and are as follows:

1. Is the certificate of an acknowledgment of a deed of trust taken by an officer interested in the debt secured, but no party to the transaction, invalid and void so as to prevent the record of the deed from being notice

2. Is it necessary to issue an execution upon a decree rendered in a pending suit, and which is still being prosecuted for the enforcement of said decree, in order to prevent the running of the statute of limitations against the decree.

3. Is not a deed of trust, though neither acknow-

ledged nor recorded a lien as between the parties to said deed?

4. Is there any lien in favor of a Railway Company for betterments placed upon land, condemned for road purposes, which by the express terms of the charter of said company it was prohibited from condemning for a road?

5. When a judgment obtained in one court is used as a cause of action in another court, and that action is prosecuted to final judgment, is not the latter judgment substituted for the former, and the lien of the former judgment destroyed?

The report of the examiner sustains all the facts unquestioned and admitted, and upon these facts reports his legal conclusions. These conclusions are excepted to The Circuit Court by its decree sustains some of the examiner's rulings and overrules others. From said decree this appeal is taken, as specified in the appeal itself.

Copies of every paper in the record, necessary to enlighten the court upon these legal issues are contained in the record filed with the clerk of this court, and the Alexandria and Fredericksburg Railway Company is the only one of the appellees who objects to its sufficiency, although the interests of the other appellees are much greater than that of the said Railway Company, and much the greater portion of the omitted record has exclusive reference to their interests.

This is not a suggestion of diminution of the record specifying the papers omitted, which the Alexandria and Fredericksburg Railway Company deems necessary for protection of its interests; but is a motion to dismiss upon the ground that no record at all has been filed.

It is respectfully submitted that there is not the

shadow of a ground for this motion, and that it ought to be denied.

The record has been filed in an honest and faithful compliance with the rule of the court and if the appellant has fallen into error in his desire to comply with the oft repeated injunctions of the court against unnecessarilly incumbering its records, it would be at least just to allow the appelant an opportunity to correct that mistake, instead of treating it as unpardonable and fatal as this motion urges the court to do.

Besides this debt is the only assets of the estate of the appellant, and he has no funds with which to pay for copies which are not absolutely necessary.

Respectfully submitted,

WILLIAM H. FOWLE, Jr. Adm'r,

by his Counsel,

H. O. CLAUGHTON.